

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
AT&T Petition for Rulemaking To Reform	)	RM 10593
Regulation of Incumbent Local Exchange Carrier	)	
Rates for Interstate Special Access Services	)	

**REPLY OF VERIZON**

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**REPLY OF VERIZON<sup>1</sup>**

**SUMMARY**

AT&T's argument that the Commission must discard almost twenty years of progressively relaxed oversight of special access prices and instead re-impose inflexible, rate-base regulation is nonsense. In reality, the special access market has long been competitive and has grown even more so in the time since the Commission adopted the pricing flexibility rules that AT&T attacks. Competitive access providers have captured 36 percent of the special access market, generated annual special access revenues of ten billion dollars in 2001, have deployed more than 1800 local fiber networks in the top 150 MSAs, and, in Verizon's territory, have established 7,000 collocation facilities in wire centers serving 78 percent of Verizon's access lines.

To a very large extent, the parties endorsing AT&T's petition merely recycle AT&T's claims. Notably, the only area where they depart from AT&T is in the relief sought: even the parties that purport to buy AT&T's factual premises urge the Commission to "deny AT&T's interim relief proposal to re-impose what is effectively rate-of-return regulation on ILEC special

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<sup>1</sup> The Verizon Telephone Companies ("Verizon") are listed in Attachment A to Verizon's Opposition (filed Dec. 2, 2002).

access services,” note that AT&T’s requested relief has “a punitive cast which makes no sense,” and warn that the relief is inconsistent with the Act, which requires that “rate prescription ... be accomplished through the procedures in Section 205 of the Act and not through ‘interim relief.’” Time Warner Telecom at 2; Sprint at 7-8.

In any event, as demonstrated in Verizon’s Opposition, there is no factual or legal foundation to AT&T’s claims. To the extent that AT&T and its supporters rely on category-specific ARMIS data, the Commission has found that those data “do not serve a ratemaking purpose.” This is so for good reason: those data have no relation to economic profit, because they are based on arbitrary cost allocation and jurisdictional separations processes. In fact, the cost and revenue allocations are so arbitrary that the revenues for some services (such as DSL) are booked to the special access category, while the costs for those services are booked elsewhere. Moreover, the ARMIS data show that RBOCs are earning negative or, at best, very small positive returns on the far larger switched access category. Verizon at 21-23; *see also* Qwest at 7-12.

The RBOCs’ special access rates are competitively disciplined, having fallen well below levels that AT&T’s and WorldCom’s now-captive access businesses once claimed were predatory. Verizon at 23-24. Indeed, RBOC revenues per special access line are decreasing in the face of growing demand, belying any argument that the RBOCs enjoy market power in pricing these services. Kahn/Taylor Decl. (Attachment C to Verizon’s Opposition) at 15. This is hardly surprising, given the existence of a multitude of alternative providers. Far from being monopoly suppliers, the RBOCs’ special access services are subject to intense competition, as AT&T and many of its supporters have conceded in their financial reports, statements to Wall Street, and even in filings with the Commission in other dockets. Verizon at 2-4, 11-20. Finally,

not only is there no evidence that RBOCs are engaging in anticompetitive conduct in the special access market, but such conduct is both precluded by the Act and contrary to the RBOCs' economic self-interest, because given the sunk investment in competitive facilities, it would reduce revenues without any prospect of future recovery. Verizon at 21-30.

There is no need to plow the same ground again here. Accordingly, Verizon responds below only to the handful of specific allegations or new issues that were not presented in AT&T's petition and refuted in Verizon's Opposition. None of these additional claims provides any basis for granting the relief AT&T seeks, which remains contrary to the law, the facts, and sound public policy.

**I. THE PRICING FLEXIBILITY TRIGGERS ARE RATIONAL INDICATORS OF SPECIAL ACCESS COMPETITION.**

The Commission selected collocation-related pricing flexibility triggers because fiber-based collocation "is a reliable indication of sunk investment by competitors."<sup>2</sup> As the Commission reasoned, such "irreversible investment" is "sufficient to discourage exclusionary pricing behavior." *Pricing Flexibility Order* at 14262 ¶ 78. Notably, the Commission recognized that "evidence of collocation may underestimate the extent of competitive facilities within a wire center, because it fails to account for the presence of competitors that do not use collocation and have wholly bypassed incumbent LEC facilities." *Id.* at 14274 ¶ 95. On review, the D.C. Circuit affirmed the Commission's rationale for collocation-based triggers and its recognition that the triggers understate the extent of competition, finding that the triggers

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<sup>2</sup> *Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd 14221, at ¶ 81 (1999) ("*Pricing Flexibility Order*"). WorldCom has conceded that the same principle was at work in AT&T's deregulation. See Comments of MCI WorldCom, Inc., CC Docket 96-262, at 62 (filed Oct. 26, 1998) ("[T]he Commission granted contract pricing authority to AT&T in large part because it found that the sunk costs associated with MCI and Sprint's extensive networks made successful predation unlikely.").

“reasonably serve as a measure of competition in a given market and predictor of competitive constraints on future LEC behavior.” *WorldCom v. FCC*, 238 F.3d 449, 459 (D.C. Cir. 2001).

In their comments on AT&T’s petition, WorldCom and Sprint merely dust off the same attacks against collocation-based triggers that the Commission and the D.C. Circuit already have soundly rejected. They provide no basis for the Commission to reconsider its action here. Other CLECs at least try to argue that changed circumstances – the economic challenges currently facing the industry – merit a re-examination of the triggers, but that contention fares no better. *See Pac-West Telecom and US LEC* at 7-10; *Cable & Wireless* at 13. These commenters misunderstand the basic principle that sunk investment in fiber and collocation deters anticompetitive conduct, even if individual competitors go out of business.<sup>3</sup> They also overstate the CLECs’ plight. The CLECs’ principle trade association is bullish for a “CLEC revival in 2003,” and has reported that CLECs have raised over a billion dollars in the last nine months. *ALTS Progress Report on the CLEC Industry*, at 1, 5 (Oct. 17, 2002) (“*ALTS Progress Report*”). Moreover, many CLECs have emerged from bankruptcy free from debt,<sup>4</sup> and financially secure firms have acquired still other bankrupt and economically distressed carriers at bargain-basement prices.<sup>5</sup> Accordingly, collocation remains an effective trigger for pricing flexibility.

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<sup>3</sup> As the Commission correctly found, “[i]f a competitive LEC has made a substantial sunk investment in [collocation], that equipment remains available and capable of providing service in competition with the incumbent, even if the incumbent succeeds in driving that competitor from the market.” *Pricing Flexibility Order* at ¶ 80.

<sup>4</sup> *ALTS Progress Report* at 1 (Teligent, McLeod, Covad, Mpower, and ICG “have emerged from bankruptcy in a much stronger financial position”).

<sup>5</sup> *ALTS Progress Report* at 1 (reporting that General Electric Business Solutions purchased ATG, Xspedius acquired e.spire, ATX obtained CoreComm, and IDT purchased Winstar); *see also* M. Popper, “StreetWise – Why Time Warner’s CLEC Could Click,” *Business Week Online*, May 23, 2001 (Time Warner Telecom purchased the assets of bankrupt GST, expanding Time Warner Telecom’s footprint into fifteen new markets).

## **II. ILEC SPECIAL ACCESS PRICING IS COMPETITIVELY DISCIPLINED.**

Verizon's Opposition demonstrated that ILEC special access pricing is constrained by competition. Rates have been stable even in the face of exploding demand, with per-line revenues actually decreasing since pricing flexibility was adopted. Indeed, rates have decreased considerably over the past decade, and are now far below levels that competitive suppliers (since acquired by the leading IXC's) once claimed were predatory. Verizon at 23-24.

Only a handful of commenters raise pricing-related evidentiary points not already refuted in connection with AT&T's petition. None offers the slightest reason for departing from almost two decades of progressively relaxed regulation of RBOC special access rates.

Sprint (at 6) alleges that Verizon "doubled its administrative fee per DS0 equivalent" in areas where Sprint has built a metropolitan area network. Sprint fails to recognize that the service at issue – Facility Management Service ("FMS") – is not a simple transmission service, but is a network management offering including a transmission component. It is unreasonable for Sprint to focus on changes in one component charge of the FMS service. In reality, the administrative rate increase, when combined with the other rate elements required to provision a FMS circuit, accounts to a mere two percent of the relevant cost. In addition, Verizon concurrently lowered the associated channel termination charge, resulting in a total circuit cost reduction of 2.5 percent. Thus, the administrative fee and channel termination rate changes essentially offset one another. *See* Verizon FCC Tariff Nos. 1, 11, 14, and 16, Transmittal No. 134, filed Dec. 21, 2001, effective Jan. 5, 2002.

Sprint (at 6-7) also alleges that both DS1 and DS3 rates have increased in pricing flexibility areas (in both cases by less than ten percent, even according to Sprint's figures). Sprint provides no explanation of which rates it examined; as noted in our Opposition, some special access rates have increased and some have decreased under pricing flexibility, and

overall revenues per-special access line have declined. Nor does Sprint's assertion, even if correct, indicate a non-competitive market. The Commission itself recognized that special access rates might increase under pricing flexibility because they had been artificially depressed under price caps. *Pricing Flexibility Order* at 14301 ¶ 155. And, as explained in the Kahn/Taylor Declaration (at 13-14), rate increases are fully consistent with a competitive market in the face of rapidly increasing demand. Indeed, some CLECs have complained that it can cost significantly more to buy access from an alternative supplier than from an ILEC – hardly suggesting that RBOC price increases are anticompetitive.<sup>6</sup>

Arch Wireless (at 3) claims that it spends one million dollars per month on ILEC special access, as if that figure in itself demonstrated that rates are too high. Of course, the absolute amount any carrier spends is irrelevant to assessing rate levels. Moreover, Arch neglects to mention that it had revenues in 2001 of over \$1.1 billion, meaning that special access costs amounted to barely one percent of its overall revenues. *See* Arch Wireless, SEC Form 10-K/A, at 2 (filed June 13, 2002).

PaeTec (at 2) asserts that its costs of leased transport have jumped from 51 to 60 percent of its overall cost of sales. Yet PaeTec fails to disclose whether other factors, such as a change in its customer base or network topology or a relative decrease in other costs, might explain the supposed increase. Nor does PaeTec even try to show that current special access rate levels are inconsistent with Sections 201 and 202 of the Act.

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<sup>6</sup> *See* Declaration of Richard Batelaan, PE, at 5 n.3, attached to *ex parte* letter from Patrick Donovan, counsel for Cbeyond Communications to Marlene H. Dortch, Secretary, FCC, filed Nov. 22, 2002 in CC Docket Nos. 01-338, 96-98, 98-147 (in gathering information from alternative transport providers, “Cbeyond also received the proposed pricing for each route from each potential provider. In almost every case the pricing exceeded ILEC *special access* pricing by one and a half to three times.”).

WorldCom asserts that ILECs' special access rates have been insulated from productivity offsets as a result of the *CALLS Order* and are therefore excessive. WorldCom at 5-11; *CALLS Order* at ¶ 165. This is revisionist history of the worst sort. The CALLS plan was a compromise between LECs and IXC's involving concessions from both industry segments. Indeed, WorldCom, while declining to join the CALLS coalition,<sup>7</sup> has benefited greatly from the resulting dramatic cuts in switched access rates. It cannot legitimately seek to retain the parts of the plan that it likes while rescinding the parts that it professes to find disadvantageous. *See generally* Frontier and Citizens at 6-8. Moreover, WorldCom (at 7-8) is far off base in suggesting that the Commission never expected BOCs to obtain such widespread pricing flexibility (so that a significant portion of special access revenues is not subject to the productivity offset). The Commission, not surprisingly, has never expressed any reservations regarding the number of MSAs in which pricing flexibility has been granted. Nor has the Commission ever suggested that special access competition would, or should, be limited to only a few MSAs; to the contrary, by adopting collocation-based triggers, it correctly anticipated that, as competition for special access services expands into new and smaller markets, pricing relief would follow.

Finally, AT&T Wireless Services ("AWS") complains that special access rates are higher than TELRIC. AWS at 5. That should hardly be surprising, since TELRIC fails to recover the costs of any carrier that does, or ever could, exist in the real world. The fact that TELRIC produces rates that are lower than competitive special access rates proves the opposite of what the opponents of pricing flexibility claim: it proves that TELRIC produces rates *below* competitive

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<sup>7</sup> WorldCom's proposed productivity factors, which WorldCom uses to compare current rates, were rejected by the Commission in the *CALLS Order* (at ¶¶ 165-66); *see* Comments on Modified CALLS Plan of MCI WorldCom, CC Docket No. 96-262, at 20 (Apr. 3, 2000).

levels.. *See* Verizon at 26 and Kahn/Taylor Decl. at 10-12. We mention this again here only because it demonstrates the two-faced nature of the CLECs' claims. On the one hand, they argue that special access rates are too high compared to TELRIC rates. On the other hand, they complain that RBOCs are unwilling to negotiate more favorable special access rates. *See* AWS at 6; Cable & Wireless at 6-7. The reality is that RBOCs are willing to negotiate individual contracts with discounted rates – in fact, Verizon has filed two such deals and has others in the works – but many CLECs refuse to discuss rates any higher than TELRIC. Consequently, until unbundled dedicated transport and high-capacity loops are removed from the list of UNEs, as they must be in light of the significant alternatives available in many locations, CLECs will be disinclined to negotiate special access contracts notwithstanding ILECs' willingness to do so.<sup>8</sup>

### **III. ALTERNATIVES TO ILEC SPECIAL ACCESS ARE WIDELY AVAILABLE.**

As demonstrated at length in Verizon's Opposition, there has been pervasive deployment of competitive fiber in rural, suburban, and urban areas across the country, undermining any argument that the ILECs are the sole source of supply for special access services. Verizon at 12-17; *see generally* 2002 *Special Access Fact Report*. The few parties contending that the ILECs are their principal special access vendors do nothing to refute that showing.

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<sup>8</sup> PaeTec (at 2-3) contends that it would rather use UNEs but is forced to use special access because the OSS for special access is better than the OSS for UNEs and because of the commingling and local use conditions. There is no basis for these claims. As the Commission has found time and again in the 271 context, the RBOCs' OSS for UNEs are non-discriminatory and provide CLECs a meaningful opportunity to compete. And the commingling and local use conditions impose no limitation on entities seeking to use UNEs for truly local service. Requesting carriers should have no right to obtain UNEs to provide non-local services because they are not impaired in using their own, third-party, or tariffed ILEC alternatives. *Competitive Telecommunications Association v. Federal Communications Commission*, 309 F.3d 8 (D.C. Cir. 2002).

Sprint, for example (at 3-4), asserts that “overall ILECs account for 93 percent” of its “special access needs.”<sup>9</sup> That statement is wholly unilluminating. A large portion of Sprint’s special access probably is supplied by its own affiliated ILECs; presumably Sprint does not look to alternative sources in those territories. In addition, that Sprint may *choose* to purchase special access from ILECs (whether or not affiliated) does not mean that it has no other options. Sprint may simply prefer not to purchase special access from the two largest alternative providers (TCG and MFS/Brooks), because they are owned by its principal long distance competitors. Likewise, those vendors, for strategic reasons, may decline to give Sprint their most competitive prices, making the ILEC a more attractive option, or may decline to provide service to Sprint because they are its competitors and believe Sprint can self-supply services just as they do. In either case, Sprint’s experience does not indicate a compelled reliance on ILEC special access, and even if it did, it still would not demonstrate a need to re-visit the pricing flexibility rules. Sprint, after all, has been competing effectively in the long distance market for years, both before and after the *Pricing Flexibility Order*, using both ILEC special access services and other alternatives.<sup>10</sup>

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<sup>9</sup> Similarly, Cable & Wireless (at 13) says that it “uses alternative fiber if it is available, but claims that CLECs “account for only 10 percent of 2002 installations (compared to 13 percent last year).” This is not tantamount to suggesting that alternative fiber is available only 10-13 percent of the time; even taking the numbers at face value, they indicate only that Cable & Wireless chose to purchase fiber from the ILEC 90 percent of the time in 2002.

<sup>10</sup> For its part, AT&T Wireless (at 2-3) alleges that more than 90 percent of its transport costs stem from ILEC special access. Once again, this tells the Commission nothing, since AWS may be ruling out alternatives for other reasons. Even if it were true that AWS has no option for 90 percent of its transport needs, that has no bearing on the need for the relief sought. AWS, like other wireless carriers, has enjoyed phenomenal revenue and subscriber growth using ILEC special access services obtained at current, market-disciplined prices.

#### IV. **SPECIAL ACCESS PRICING FLEXIBILITY PROMOTES COMPETITION.**

As the Commission recognized in the *Pricing Flexibility Order*, freeing the RBOCs to provide special access service on a contractual basis and unencumbered by intrusive price cap regulation is pro-competitive. *Pricing Flexibility Order*, ¶¶ 19 (“As the market becomes competitive, [regulatory] constraints become counter-productive”), 144 (“The Commission has determined on several occasions that retaining regulations longer than necessary is contrary to the public interest”). Moreover, the Commission properly found that the triggers assure the existence of sufficient competition to inhibit anticompetitive conduct. *Id.*, ¶¶ 25, 80. The CLECs (and some large customers) disagree, largely for reasons that we have refuted in our Opposition. Their remaining claims are dealt with below.

##### A. **ILEC optional pricing plans present a valuable alternative for access customers.**

For more than a decade, ILECs have offered special access volume and term discounts. Such plans, as the Commission has recognized, “are generally legitimate means of pricing special access services to recognize the efficiencies associated with larger traffic volumes and the certainty of longer-term arrangements.”<sup>11</sup> Various CLECs nonetheless allege that volume and term plans lock up customers and therefore prevent competition from developing. Arch Wireless at 4; AWS at 6; CompTel at 4. These parties fail to note that volume and term plans have been available since the early 1990s, so that (1) they have nothing to do with the pricing flexibility rules, and (2) they can hardly be said to “lock up” customers, who have long been free

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<sup>11</sup> *Expanded Interconnection with Local Telephone Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5200 at ¶ 168 (1994); *Access Charge Reform*, Notice of Proposed Rulemaking Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354 at 21435 ¶ 187 (1996) (“*Access Charge Reform NPRM*”) (“We have previously concluded that volume and term discounts can reasonably recognize certain efficiencies that flow from volume or term commitments made by purchasers.”). In this regard, Drs. Kahn and Taylor explain that “[t]erm and volume discounts expand consumer choice and ultimately expand demand, increasing consumer welfare directly.” Kahn/Taylor Decl. at 30.

to choose alternative vendors. The CLECs also neglect to mention that the associated termination liabilities are far from punitive – and, indeed, are less than those demanded by AT&T itself – and therefore present no significant obstacle to switching vendors during a plan’s term. *See* Verizon at 27-28. Finally, the CLECs decline to note that they raised, and the Commission soundly rejected, these very same arguments in the *Pricing Flexibility* proceeding.<sup>12</sup> In essence, these CLECs wish to secure the lower prices that a competitive market provides through volume and term discounts without actually having to make the associated commitments. They proffer no basis for re-visiting the Commission’s rules.

**B. TWT’s Predation Claims Are Sheer Speculation.**

Where other CLECs complain that RBOC special access rates are too high, Time Warner Telecom (“TWT”) contends that the pricing flexibility rules enable the RBOCs to engage in predatory pricing or “reputation predation.” TWT at 4-14. Notably, TWT makes the same arguments, refers to the same “modern” economic analysis, and cites the same pre-pricing flexibility Commission decisions, that it included in unsuccessfully trying to stave off pricing flexibility in the first place. The Commission already has squarely addressed and rejected these contentions in making its judicially-approved determination that sunk investment adequately disciplines efforts to price predatorily.

The remainder of TWT’s argument consists of a single baseless hypothetical, in which TWT cautions that ILECs might target price cuts to particular buildings where CLECs are present, without actually stating the ILECs have done so. TWT at 13. In marked contrast, Cable & Wireless (at 6-7) asserts that ILECs must have market power because they *do not* drop prices for customers in buildings where competition exists. The CLECs cannot have it both ways. Nor

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<sup>12</sup> *See, e.g.*, Comments of WorldCom, Inc., CC Docket Nos. 96-262 and 94-1, at 11 (filed Nov. 9, 1998).

does TWT explain why, in light of the supposedly massive risks of exclusionary conduct, CLECs have continued to lay fiber, connect to buildings, and gain special access market share – notwithstanding extensive grants of pricing flexibility and the industry’s economic travails.<sup>13</sup> Obviously, if the RBOCs were trying to inhibit competition (which they are not), they have been singularly inept at doing so.

Notably, in ten pages of discussion on this issue, TWT offer only one specific allegation of predatory conduct, repeating a claim made by WorldCom in a different proceeding. In particular, TWT states that it finds it “worrisome” that some DS3 fixed charges are lower than corresponding UNE rates, while some DS3 mileage charges have increased. TWT at 13 (citing a WorldCom *ex parte* in CC Docket No. 01-338). TWT can rest easy. The relationships of Verizon’s fixed and mileage-based charges have not changed significantly since the introduction of pricing flexibility and are generally consistent with the way competitors price these services.<sup>14</sup> In addition, the fact that a single rate element may be below a corresponding TELRIC rate likely indicates nothing more than a particular foible of the TELRIC model used to generate the UNE rate, or the assumptions made regarding cost allocations between fixed and mileage-based charges. Further, individual rate element comparisons are irrelevant as customers purchase both fixed and mileage components for the service. TWT does not contend, and there is no evidence, that the total DS3 circuit charge is below TELRIC.

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<sup>13</sup> Between the third quarter of 2001 and the third quarter of 2002, TWT expanded its network by 1046 route miles and connected “on fiber” to an additional 367 buildings. See “Time Warner Telecom Announces Third Quarter 2002 Results,” News Release (Oct. 30, 2002). Presumably, TWT would not have done so if it truly believed the ILECs would act in the manner it speculates.

<sup>14</sup> In fact, for the Verizon rate comparisons used in the WorldCom *ex parte* to which TWT refers, the rates in the *pricing flexibility* areas are the same as the rates in the *price cap* areas.

C. **Pricing Flexibility Enhances Rather than Diminishes Broadband Deployment.**

Pricing flexibility motivates ILECs to deploy their limited resources most efficiently by enabling them to meet competitive demands. In a price cap environment, investment will be stifled to the extent rate regulation prevents ILECs either from achieving a sufficient return on their investment (by increasing prices where economically rational) or from lowering prices in order to retain customers or capture new business. In contrast, under pricing flexibility, these disabilities are removed. Because it is able to adjust prices, the ILEC can compete more effectively; because it can compete more effectively, its investment incentives are sharpened. And, because the ILEC can compete more effectively, other suppliers in the market are likewise subject to greater market discipline (to their evident dissatisfaction) and more rational investment incentives.

Notwithstanding these economic truisms, Cable & Wireless (at 17-20) argues that the ILECs' assertedly exorbitant special access prices are retarding investment in broadband networks that supposedly depend on special access to reach customers. According to Cable & Wireless, the RBOCs are leveraging bottleneck control over special access to reduce output in the downstream broadband market. *Id.* at 19. This is absurd for several reasons.

First, as explained in Verizon's Opposition, ILECs have no bottleneck control over the special access market – not with competitors having deployed almost 2000 networks comprising almost 200,000 fiber miles. Second, setting aside that dispositive point, Cable & Wireless's theory cannot be reconciled with the explosive demand for special access service. It is hard to imagine that the deployment of "next-generation broadband" networks is being retarded when so much of special access demand is fueled by the growth of Internet and other data services. Kahn/Taylor Decl. at 12; Verizon at 28-29. Third, there is no lack of long-haul broadband

bandwidth – the kind of investment that Cable & Wireless (at 18 n.16) asserts is being deterred – indeed, there is unanimous agreement that there is too much capacity in that segment of the market.<sup>15</sup> The shortage of broadband capacity relates to the local exchange, where ILECs labor under obligations to share new investment at arbitrarily low rates and CLEC investment is depressed by the prospect of having to compete against the availability of below-cost, unbundled capacity from the ILECs.

Cable & Wireless’s prescription – forcing ILECs to slash special access rates – would only make matters worse. Artificially suppressing the competitively determined market price and capping potential returns at unreasonably low levels would destroy investment incentives for ILECs and their competitors alike. In short, Cable & Wireless is correct that the Commission must eliminate barriers to investment in broadband infrastructure, but it is profoundly wrong in suggesting that eliminating pricing flexibility will advance rather than undermine that fundamental goal.

**V. THE CLECS’ REMAINING ARGUMENTS PROVIDE NO BASIS FOR INSTITUTING A RULEMAKING.**

Cable & Wireless (at 25) suggests that the Commission’s current pricing flexibility rules, by allegedly failing to constrain special access rates, “raise a serious question as to whether the United States would be in violation of its commitments under the WTO and the Basic Telecom Agreement.” As an initial matter, there is no basis for concluding that the ILECs’ special access rates promote anticompetitive conduct (the basis alleged by Cable & Wireless for suspecting

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<sup>15</sup> See, e.g., Written Statement of Michael K. Powell before the Senate Commerce Committee, “Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications” (July 30, 2002) (“The long-haul markets are glutted with excess capacity that dramatically exceeds demand (even given the strong growth in demand that we have seen”); Sarah Cohen, “Corning’s pane in the glass,” *The Daily Deal* (Nov. 28, 2002) (“the market for long-haul fiber is dead,” with “enough fiber in ground to satisfy demand for the next 20 to 40 years”).

such a violation). Both the special access market itself and the various downstream markets using special access as an input are vigorously competitive, as fully explained in Verizon's Opposition (at 18-20). In addition, the United States unquestionably has lived up to its international obligations, having made good on its promise "to allow foreign suppliers to provide a broad range of basic telecommunications services in the United States."<sup>16</sup> Indeed, the United States has led the way in implementing the WTO's mandate, aggressively opening its markets to foreign investment both before and after the WTO agreement and thereby fulfilling its "commitments relating to market access [and] national treatment."<sup>17</sup>

Finally, several CLECs use AT&T's petition as a means to raise a host of tangential issues, including access by CMRS carriers to unbundled transport,<sup>18</sup> adoption of special access performance measures,<sup>19</sup> imposition of obligations to build facilities in order to provide UNEs,

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<sup>16</sup> See generally, *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 (1995); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Order on Reconsideration, 15 FCC Rcd 18158 at ¶ 27 (2000).

<sup>17</sup> In particular, the United States "treat[s] like services and service suppliers from other WTO Members no less favorably than it treats its own services and service suppliers;" "administer[s] [domestic regulation] in reasonable, objective, and impartial manner;" and satisfies the Reference Paper's principles, namely "competition safeguards, interconnection, universal service, transparency of licensing criteria, independence of the regulator and allocation of scarce resources." *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 at ¶¶ 3, 335-340 (1997) ("*Foreign Participation Order*"). This is not surprising, since the Basic Telecom Agreement was premised, in large part, on the market opening and pro-competitive reforms made in the 1996 Act. See Statement of Ambassador Charlene Barshefsky, WTO Basic Telecom Agreement, Testimony before the House Commerce Committee – Subcommittee on Telecommunications, Trade and Consumer Protection (Mar. 19, 1997).

<sup>18</sup> Compare AT&T Wireless at 5 with Comments of AT&T Wireless Services, Inc., CC Docket No. 01-338, at 23-32 (filed Apr. 5, 2002); compare Arch Wireless at 7 with Comments of Arch Wireless, Inc., CC Docket No. 01-92, at 11-15 (filed Apr. 5, 2002).

<sup>19</sup> Compare Time Warner Telecom at 14-16 with Comments of Time Warner Telecom and XO Communications, Inc., CC Docket No. 01-321, at 17 (filed Jan. 22, 2002).

and elimination of commingling restrictions, that already are being dealt with in other dockets.<sup>20</sup> Verizon has comprehensively addressed these meritless requests in the appropriate dockets and will not reiterate its counter-arguments here. The Commission should consider and reject the CLECs' claims in those proceedings; the CLECs provide no basis for opening yet another forum to re-hash the same tired arguments.

**VI. AS SEVERAL CLECS RECOGNIZE, THE RELIEF SOUGHT BY AT&T IS UNLAWFUL AND CONTRARY TO SOUND PUBLIC POLICY.**

Tellingly, several parties that support the premise of AT&T's petition nonetheless object to AT&T's proposed remedies. Time Warner Telecom, for example (at 2), urges the Commission to "deny AT&T's interim relief proposal to re-impose what is effectively rate-of-return regulation on ILEC special access services." And Sprint (at 7-8) notes that the relief sought by AT&T has "a punitive cast which makes no sense" and is inconsistent with the Act, which requires that "rate prescription ... be accomplished through the procedures in Section 205 of the Act and not through 'interim relief.'"

There is, moreover, no consensus on the appropriate relief in any event, even assuming any change in the current rules were warranted. Facilities-based competitors urge the Commission to prohibit discounted contract tariffs but express no real concern about rate increases,<sup>21</sup> while large users of special access would strictly cap rate increases while retaining contract tariffs.<sup>22</sup> This lack of consensus underscores the truly competitive nature of the special access market: customers seek lower prices and better deals, and competing carriers seek

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<sup>20</sup> Compare XO Communications at 4-9 with Reply Comments of XO Communications, Inc., CC Docket No. 01-338, at 13-18 (filed July 17, 2002).

<sup>21</sup> TWT at 2 (advocating the elimination of ILEC contract tariffs).

<sup>22</sup> Sprint at 8 (seeking protection for ILECs' power "to respond to actual competitive bids"); Ad Hoc at 3-5 (supports ILECs' ability to enter into contract tariffs).

restraints on their competitors. This marketplace dynamic never has been, and never should be, the basis for regulatory action.

**CONCLUSION**

AT&T's petition should be denied.

Respectfully submitted,

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January 23, 2003

## **CERTIFICATE OF SERVICE**

I, Bradley K. Gillen, hereby certify that on January 23, 2003, I caused a copy of the foregoing Reply Comments of Verizon to be served via first class mail to the following:

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